



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90; FCC 13-97]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) sua sponte reconsiders one aspect of the recent Phase I Order and provides a limited waiver of the Phase I election deadline. The Commission now requires carriers to report updates to planned Phase I deployments to the Commission, relevant state commissions, and relevant Tribal governments.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for §§ 54.312(b)(3) and 54.312(c)(4) which contain OMB requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Ryan Yates, Wireline Competition Bureau, (202) 418-0886 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in WC Docket No. 10-90; FCC 13-97, adopted on July 15, 2013 and released on July 16, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554. Or at the following Internet address: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-97A1.pdf

I. INTRODUCTION

1. In the Order on Reconsideration, the Commission sua sponte reconsiders one aspect of the recent Phase I Order, 78 FR 38227, June 26, 2013, and provides a limited waiver of the Phase I election deadline. First, the Commission now requires carriers to report updates to planned Phase I deployments to the Commission, relevant state commissions, and relevant Tribal governments. If the

intended new deployment will occur in census blocks not previously identified, the updates must be submitted at least 90 days prior to commencing construction. Making this reporting mandatory will further transparency regarding the use of this funding, for the benefit of regulators and the general public. This will strengthen monitoring and oversight over Phase I recipients and will better ensure that Phase I support is not spent in areas that already receive service through another provider. Second, we provide a 15-day waiver of the deadline for carriers to accept second round Phase I support. This extension makes the second round election period 90 days, which is the same amount of time as was provided for first round Phase I elections.

II. DISCUSSION

A. Reconsideration of Reporting Requirements

2. Under § 1.108 of our rules, the Commission may, on its own motion, reconsider any action made or taken within 30 days from the date of public notice of such action. In doing so, the Commission may take any action it could take in acting on a petition for reconsideration, including reversing or modifying the original order.

3. We now reconsider the Commission's decision in the Phase I Order regarding optional reporting of changes to planned Phase I deployments. On further reflection, we conclude that it is appropriate to require Phase I recipients to report changes in deployment plans when those decisions are made, rather than at the completion of the Phase I deployment period as required under the current rules. If, in satisfying its Phase I buildout obligations, a recipient plans to deploy to locations in a census block not identified when it initially accepted Phase I support, the recipient must report that new census block to the Commission, relevant state commission, and relevant Tribal governments, at least 90 days prior to commencing construction in that new census block. Likewise, a recipient of Phase I support must submit updates indicating that it no longer plans to deploy to one or more census blocks it initially identified when accepting support, prior to making the certification required under § 54.313(b)(2) of our rules. This

reconsideration of reporting requirements applies to changes in deployment plans for either the first or second round of Phase I that occur after the effective date of this new rule.

4. This minor change strengthens our ongoing ability to oversee use of this public funding and is consistent with our commitment to accountability and oversight, ensuring that universal service funding is used as efficiently as possible. When a recipient alters its Phase I deployment plans, the Commission, the relevant state commissions, relevant Tribal governments, if applicable, and the general public should be informed of that decision. By requiring Phase I recipients to identify new census blocks, Commission staff will be able to verify that the locations in those census blocks are, in fact, shown as unserved on the National Broadband Map. Additionally, as Phase I election and buildout information is publicly disclosed, the reporting of new census blocks will inform the public, including existing providers, of where the recipient now intends to meet its Phase I buildout obligations. To further ensure that the public is aware of changes in deployment plans, the Wireline Competition Bureau (Bureau) will issue a public notice announcing the updated deployment plans. This will give any existing provider the opportunity to notify the recipient that the provider already serves the census block in question, thereby furthering the Commission's objective of not supporting areas where there are unsubsidized competitors.

5. We conclude that it is reasonable to provide potential existing providers 45 days from the Bureau giving public notice of the new planned census blocks to notify the Phase I recipient that they are currently providing service to the locations in question. No sooner than 46 days after the Bureau issues a public notice announcing the change and in any event no later than the commencement of construction in the new census blocks, we require the Phase I recipient to make all appropriate certifications that would have been required had the recipient initially identified the new census blocks at the time it accepted Phase I support. A Phase I recipient may disregard any notice from a potential existing provider received after the recipient makes its certifications. All certifications must be based on information available at the time the certifications are made.

B. Waiver of Election Deadline

6. Carriers were initially provided 75 days from the release of the Phase I Order to elect to accept or decline Phase I support. One price cap carrier has requested a 15-day extension of time, noting that additional time is needed to analyze new deployment opportunities and to consult with the Commission on planned deployments. On our own motion, we grant a limited waiver of the Phase I election deadline, allowing all price cap carriers to submit their elections up to 15 days after the original deadline. We conclude that good cause exists to grant a limited waiver in this circumstance. While the Commission had originally predicted that 75 days would be a sufficient period of time for carriers to make second round elections, based on the record, we now determine that additional time is warranted. Because the Commission expanded the eligible areas in the second round of Phase I, carriers now must complete additional analyses that were not previously undertaken for the first round. We find that a brief extension of time will facilitate the ability of Phase I recipients to provide advance notice of Phase I elections to Commission staff before the election deadline. We note that the Commission provided 90 days to make an election in the first round of Phase I, and this action will harmonize the time provided for elections in the first and second rounds of Phase I. We conclude that providing a limited extension to all price cap carriers would be appropriate, and we now extend this deadline to 90 days from the release of the Phase I Order. Therefore, Phase I elections are due August 20, 2013.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

7. This document contains new or modified information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

8. In this present document, we have assessed the effects of requiring carriers to report changes in planned Phase I deployment, and we find that the burden on companies with fewer than 25 employees will be minimal. Only price cap carriers or rate-of-return carriers affiliated with price cap carriers are eligible for Phase I support. All such entities have more than 25 employees. Other providers, including cable companies and wireless Internet service providers, have the option to file with the price cap carrier in question and/or on the Commission's ECFS a notice that they already provide service to a given location. These providers may be small businesses. However, the option to make this filing is designed to benefit such providers by reducing the likelihood that Connect America funds are used to subsidize the overbuilding of their existing networks

B. Final Regulatory Flexibility Certification

9. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

10. This document modifies the reporting requirements contained in the Phase I Order. This modification does not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to USF/ICC Transformation Order, 76 FR 73830, November 29, 2011. Therefore, we certify that the requirements adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration, including a copy of this final certification, in a report to Congress

pursuant to SBREFA. In addition, the Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.

C. Congressional Review Act

11. The Commission will send a copy of the Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201(b), 214, 218-220, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 154(j), 155, 201(b), 214, 218-220, 254, 1302, and §§ 1.1 and 1.108 of the Commission's rules, 47 CFR 1.1, 1.108, that the Order on Reconsideration IS ADOPTED.

13. IT IS FURTHER ORDERED, pursuant to § 1.103(a) of the Commission's rules, 47 CFR 1.103(a), that the "Reconsideration of Reporting Requirements" section of the Order on Reconsideration involves Paperwork Reduction Act burdens, and SHALL BE EFFECTIVE immediately upon announcement in the Federal Register of OMB approval of the information collection requirements and an effective date.

14. IT IS FURTHER ORDERED, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, that the deadline for carriers to file Phase I second round elections IS WAIVED to the extent described above, and, pursuant to § 1.103(a) of the Commission's rules, 47 CFR 1.103(a), SHALL BE EFFECTIVE immediately upon release of the Order on Reconsideration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 is revised to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.312 by revising paragraphs (b)(3) and (c)(4) to read as follows:

§ 54.312 Connect America Fund in Price Cap Territories – Phase I.

* * * * *

(b) * * *

(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any

merger commitment or similar regulatory obligation. If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks. No sooner than 46 days after the Wireline Competition Bureau issues a public notice announcing the updated deployment plans but prior to commencing deployment, the carrier must make the certifications described in this paragraph with respect to the new census blocks. If a carrier no longer intends to deploy to a previously identified census block, it must inform the Commission, the Administrator, relevant state commission, and any affected Tribal government prior to filing its certification pursuant to § 54.313(b)(2).

* * * * *

(c) * * *

(4) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the \$775 amount, and the number of locations at the \$550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation; or stating that it declines incremental support. Such notification must be made within 75 days of being notified of any incremental support for which it would be eligible. If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks. No sooner than 46 days after the Wireline Competition Bureau issues a public notice announcing the updated deployment plans but prior to commencing deployment, the carrier must make the certifications described in paragraph (c)(5) of this section with respect to the new census blocks. If a carrier no longer

intends to deploy to a previously identified census block, it must inform the Commission, the Administrator, relevant state commission, and any affected Tribal government prior to filing its certification pursuant to § 54.313(b)(2).

* * * * *

[FR Doc. 2013-19233 Filed 08/08/2013 at 8:45 am; Publication Date: 08/09/2013]